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## THE LUBIGI CANAL CASE THROUGH THE REFORM OF THE ACCOUNTABILITY MECHANISM IN THE CONTEXT OF THE WORLD BANK

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**Abstract:** This work was based on an analysis of the Lubigi case after the presentation of the investigation to the panel established by the World Bank and after the reform carried out in 2020. The many interests for the international community and for the inhabitants of the area after the examination on the merits by the panel where disputes are subjected to a conciliation procedure, mediation to reach a conclusion, an agreement where the authorities of the territorial state and local communities are the main topics of our analysis. The Lubigi Canal case has shown us not only

the violations in the area of some important rights for both the environment and human life but has shown us that the effectiveness and the problematic profiles highlighted put into application the role of the world bank's mechanism which in the future will allow us various discussions for accountability in the context of international organizations.

**Keywords:** World Bank; IBRD; IDA; forced evictions; Inspection Panel; conciliation; accountability mechanisms; mediation; Lubigi channel.

## INTRODUCTION

The International Bank for Reconstruction and Development (IBRD or BIRS) and the International Development Association (IDA) have had an inspection panel since 1993 which is responsible for receiving the relevant complaints for violations of internal regulations and project financing now harmful to the interests not only of the bank itself but also of the community concerned

(Naudè Fourie, 2016; Sovacool, Naudè Fourie, Tan-Mullins, 2019). The World Bank was under criticism for financing projects that caused enormous proportionate damage to the environment and people.

As early as 1990, a first investigation was carried out relating to the construction of the dam in India relating to the Sardar Sarovar power plant (Morse, Berger, 1992). The related relationship led to violations of internal regulations that were in force. Pressure from public opinion has driven the World Bank towards an ad hoc approach as an institutional mechanism that allows for the detection of violations as well as the management and the board of directors to adopt corrective measures by also disbursing tranches that are subsequent to a certain loan. Through the relevant Resolution between the boards of directors of the IBRD and IDA<sup>1</sup>, the Inspection Panel of the World Bank has

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<sup>1</sup>BIRS, Resolution No 93-10:

<https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/cases/documents/127-Notice%20of%20Registration-12%20September%202018.pdf>; International Development Association (IDA), Resolution No 93-6:

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/584881493411730552/the-inspection-panel-election-of>

established a model for similar control and evaluation bodies in other multilateral development banks (Suzuki, Nanwani, 2005) as well as in the group of World Bank.

Despite the lack of a jurisdictional gap, these internal mechanisms are appropriate to promote individual rights given that the IBRD has recognized the immunity from jurisdiction that national courts are called upon to answer for damages caused in the implementation of financial and supervised projects<sup>2</sup>. The Panel of 1996 and 1999 (Schlemmer-Schulte, 2001) as well as the accountability mechanism was an important reform object of 2020 where disputes are found subjected to an alternative mediation procedure<sup>3</sup>. It is a reform of the World Bank's

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chairperson

<sup>2</sup>See also the case of 27 February 2019, Jam et al v. International Finance Corporation 586 US(2019):

[https://www.supremecourt.gov/opinions/18pdf/17-1011\\_mkhn.pdf](https://www.supremecourt.gov/opinions/18pdf/17-1011_mkhn.pdf)

6 July 2021, Jam et al v. International Finance Corporation, No. 20-7092 (D.C. Cir. 2021):

<https://law.justia.com/cases/federal/appellate-courts/cadc/20-7092/20-7092-2021-07-06.html>; and the case ongoing: Juana Doe et. al v. International Finance Corporation:

<https://earthrights.org/case/juana-doe-et-al-v-ifc/>

<sup>3</sup>Resolution No. IBRD 2020-0004:

accountability mechanism which favored the achievement of a coordination solution between the beneficiary state and local communities, leaving the responsibility of the organization in the background. However, the implementation of projects that complied with international law were not the same as the social and environmental objectives that the bank was pursuing. The panel's assistance role marked a step backwards in the process of accountability to international financial organizations.

These are statements under great discussion which we have also seen in practice through the Lubigi canal in Kampala (Uganda), a drainage canal which its residents denounced the bank's internal policies violations regarding forced transfers, environmental assessment as well as the protection of cultural heritage. A project that involved the resettlement of a local community with numerous and

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<https://thedocs.worldbank.org/en/doc/324181599763396673-0330022020/original/InspectionPanelResolution.pdf>

and Resolution No. IDA 2020-0003, 8 September 2020, par. 59: <https://thedocs.worldbank.org/en/doc/a3ef833e011d9b4379daffd12f1c2b59-0490082020/world-bank-inspection-panel-Resolution-ibrd-2020-0004-ida-2020-0003-8-sep-2020>

large works financed by the World Bank itself, implying a forced evacuation of dozens of villages (Rich, 1994). The critical issues remain open and major works are emerging in the countries receiving loans from multilateral development banks in terms that are not adequate due to the lack of public involvement in decision-making processes and the social and environmental impact to the detriment of local communities (Hutchins, 1992; Hernandez Uriz, 2002). The main interest lies in the new mediation procedure which has been activated where already since May 2023 it has found ground for the resolution of the dispute through the conclusion of an agreement without the activation of the investigative powers of the relevant panel. The effectiveness and the problems are certainly part of the World Bank Accountability Mechanism but which leave open arguments on the matter.

#### **THE WORLD BANK ACCOUNTABILITY MECHANISM AND THE 2020 REFORM**

The relevant inspection panel within the World Bank has become operational through the World Bank

Accountability Mechanism (WBAM) with its own Secretariat and a new administrative structure namely the Dispute Resolution Service which has been tasked with managing an alternative mechanism for resolution of controversies (Seatzu, 2021)<sup>4</sup>. The board of directors authorized the panel to carry out the inspection by introducing that the state receiving the loan chooses a jurisdictional procedure which sees the involvement of an independent third party. The two parties have appointed by mutual agreement a person in charge of carrying out mediation, conciliation and fact-finding with the aim of facilitating the dispute and its settlement (Desierto, Perez-Linan, Wakkaf, Gagnon, Carriedo, 2020 )<sup>5</sup>.

The WBAM resolution allowed the parties freedom in identifying the objectives, forms and time of the procedure. The management of the World Bank as an eventual

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<sup>4</sup>Resolution No. IBRD 2020-0005:

<https://www.worldbank.org/en/programs/accountability/brief/mandate-and-procedures>

and Resolution No. IDA 2020-0004 (2020), 8 September 2020.

<sup>5</sup>Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004, op. cit., par. 12, lett. c).

observer<sup>6</sup> provided the new dispute resolution service with support for the will of the parties. The dispute Resolution service monitored the execution of the services in the agreement that authorized the parties<sup>7</sup>, leaving them free to identify the methods of carrying out mediation and conciliation according to the 2020 Resolution which requires the parties to choose and maintain in a confidential manner the content of a final agreement<sup>8</sup>.

When the dispute is resolved within the period of one year even after the extension of a maximum of six months, the parties sign an agreement simultaneously informing the panel and the board of directors. Otherwise no agreement is reached within certain deadlines and the panel will thus carry out its request according to the methods that have already been in force in the past in the resolution of disputes. If the agreement concerned the disputes of the request, the panel submitted the issues in the parts that

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<sup>6</sup>Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004 (2020), op.cit., par. 12, lett. e). WBAM, Operating Procedures, 5 December 2022, par. 22.

<sup>7</sup>WBAM, Operating Procedures, op. cit., par. 24.

<sup>8</sup>Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004 (2020), op. cit., par. 15, lett. a).

were granted.

So the World Bank is not a party to the agreements on this matter. Their legal nature excludes the possibility that they are international law agreements, given that the lack of international subjectivity of one of the contracting parties and the group of individuals is the counterpart of the state. The lack of an *electio iuris* clause is normal and it is considered that these are contracts that are subject to the law of the contracting state. Its validity is appreciated according to the specificity of each system and to the content of each agreement that seems to present doubts.

The closure of a case after a possible agreement excludes the possibility that the panel is called upon to rule on the matter by IBRD or IDA and the relevant internal regulations. One of the reasons for inadmissibility of inspection requests is that the panel adopted the recommendation on the subject matter unless new facts or circumstances emerged<sup>9</sup>.

As for those who have signed an agreement relating to the outcome of the mediation, it is unlikely that they will

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<sup>9</sup>Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004 (2020), *op. cit.*, par. 15, lett. d).

submit a new request to the panel and new facts will emerge. It is reasonable that the agreements in this regard include a prohibition in this sense since it assists punishments that are private and negotiable in nature thus allowing the applicable law. The panel decides only on the admissibility and not on the merits of the request which deems as admissible the requests of other members of the public who are interested and who did not participate in the relevant mediation and who have thus risked suffering prejudice due to the same project<sup>10</sup>. The project submits the examination of the panel and the board of directors and of the individual executive directors as bearers of the general interest according to internal regulations.

The resolution establishing the WBAM has as its objective the mutual interference between the panel activity and the alternative dispute resolution system. The panel does not have as its role the resolution of the dispute which involves

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<sup>10</sup>See the Operating Procedures of Panel, al par. 44 that affirms: “(...) raises concerns about the same project and substantive matter as in a previous request about which the panel already made a recommendation on whether an investigation was warranted (...) new facts or circumstances not known at the time of the prior request are submitted to the panel that distinguish the new request from the previous one (...)”.

the state:

“(...) not opine on policy compliance in dispute resolution or the outcome of the dispute resolution process (...) information disclosed in a dispute resolution process is not used in a later compliance investigation (...)”<sup>11</sup>.

The related operating procedures are used to evaluate and supervise the dispute resolution service. As regards exceptional cases, it is believed that the dispute resolution procedure is used to promote conduct of a criminal or criminal nature and the Secretary of WBAM may ask the board of directors to put an end to the procedure. The same secretary asks the parties for the appropriate modifications having reason to believe that the parties include an agreement to the contrary clauses of international law and to the domestic law that is applied. The secretary thus asks the vice-presidency of legal affairs of the bank for an opinion, believing that the agreement has repercussions on the legal sphere of the organization.

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<sup>11</sup>Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004 (2020), op. cit., par. 6.

## THE LUBIGI CANAL AS A CASE OF INVESTIGATION

The Lubigi canal case was presented in June of 2021 by a Ugandan organization and supported by a non-governmental organization i.e. the accountability counsel to the World Bank inspection panel. The canal was to be built a drainage canal in the Kawaala neighborhood of Kampala as a large infrastructure project funded by IDA<sup>12</sup>. The project built an intervention by engineers from the EU and the European Investment Bank who in 2010 diverted an original course into the channel<sup>13</sup>.

This deviation was temporary in nature and according to the international community that was interested in the project it contributed to a worsening of the

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<sup>12</sup>World Bank, Second Kampala Institutional and Infrastructure Development Project (KIIDP-2):

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/504911468115450273/uganda-second-kampala-institutional-and-infrastructure-development-project-kiidp-2>

<sup>13</sup>Accountability Counsel, Witness Radio, Request for Inspection by the World Bank Inspection Panel in Kampala Institutional and Infrastructure Development Project, 17 June 2021, p. 10ss:

<https://www.inspectionpanel.org/news/panel-registers-request-inspection-uganda-infrastructure-project>

hydrogeological conditions of a territory that was subject to continuous enlargement.

A project for an area of 300 people as inhabited who lived from agriculture, subsistence farming and in low income conditions. After the eviction order that dates back to 2020, some inhabitants of Kawaala appealed to national judges, thus preventing the forced execution. The attention of the World Bank management together with the support of Witness Radio Uganda activated the accountability mechanism by complaining about violations of the rules contained in the operating manual. The request was presented by recipients who were demolished and who derived their only source of income from the cultivation of land that was adjacent to the canal. Thus, suitable documents are attached to demonstrate the possession of land as tenants or customary tenants according to the Kibanja institution who have been paying for years a fee created to manage the lands that were returned on the basis of the Restitution of Assets and Properties Act of 1993 (Nakazawa, 2002).

The public body was responsible for the implementation of the project (Kampala Capital City Authority, KCCA) which

took advantage of the impossibility of control on site and by the World Bank and poor monitoring that was done during the Covid-19 pandemic<sup>14</sup>. The relevant information is provided in a sparse and accessible way and the interested parties have not been offered the opportunity to take part in the consultations in the evaluation of the impact of the work and the interviews for the related compensation. The attempted forced eviction was motivated by needs that were linked to the hydrogeological risk and the compliance of the buildings, taking place without warning and the presence of armed forces. The residents in the neighborhood are illiterate people who signed documents in English who were not even able to understand their own content on what they put their signatures on.

The panel highlighted the eviction that deprived community members of access to land and the income essential for a dignified existence. In the area concerned, the widening of the canal included burials of residents' ancestors which, according to the project, would thus be

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<sup>14</sup>Accountability Counsel, Witness Radio, Request for Inspection, op. cit., p. 24.

destroyed in the face of economic profit from the project<sup>15</sup>. The possibility of a transfer considering the hydrogeological insecurity of the area followed the diversion of the canal where the local community requests the adequate movement, scheduled following the outcome of the actual consultation which provides compensation and assistance to the Ugandan authorities through the provision of scholarships and forms of financial aid during the transition period.

The request that was presented denounced the violations of the internal regulations of the World Bank, of international obligations incumbent on Uganda in the field of human rights with reference to the pact on economic, social and cultural rights. The World Bank accountability procedure was frequent in requests that addressed to the inspection panel international human rights standards that refer to ad adiuvandum and in a generic manner. Cases of forced displacement regarding indigenous peoples or local communities living in rural areas derive their source from the existence of natural resources that were likely to

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<sup>15</sup>Accountability Counsel, Witness Radio, Request for Inspection, op. cit., p. 24 s.

undermine human rights that were protected by international conventions and of a universal or regional nature. Rights such as property, work, respect for private and family life<sup>16</sup> reaching the right to life according to the interpretation provided to the human rights committee (Claridge, Kobei, 2023)<sup>17</sup>.

However, the request did not include the protection of collective and not individual human rights as well as the

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<sup>16</sup>UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, The Right to Adequate Housing (Art. 11.1): Forced Evictions, 20 May 1997, UN Doc. E/1998/22:

<https://www.refworld.org/docid/47a70799d.html>

<sup>17</sup>UN Human Right Committee, General Comment No. 36, Article 6 (Right to Life), 3 September 2019, UN Doc. CCPR/C/GC/35, parr. 26 and 62:

<https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

See also the conclusions of the 25 July 2019 in case Portillo Cáceres and others v. Paraguay (communication n. 2751/2016, UN Doc. CCPR/C/126/D/2751/2016) affirms that: “(...) states should take all appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity, and these conditions include environmental pollution (...). African Court of Human Rights, 26 May 2007, African Commission on Human and Peoples' Rights v. Republic of Kenya (“Ogiek case”), n. 006/2012.

incisive protection of the African Charter of Human and Peoples' Rights to which Uganda is a party as well as the right to development (art. 22), the right to the environment (art. 24) and to dispose of natural resources (art. 21).

### **CLAIMS OF VIOLATIONS OF THE MANUAL OPERATIONS IN THE CASE UNDER INVESTIGATION**

The relevant inspection after the complaint was in accordance with the environmental impact assessment and the attempted forced eviction which complied with the rules of the operating manual. The request complained of the violation of three of the operational policies that were applied ratione temporis to the project, namely: OP 4.01 (Environmental impact assessment) (Nielson, Tierney, 2003)<sup>18</sup>, OP 4.12 (Forced transfers)<sup>19</sup> and the OP 4.11 (Cultural heritage)<sup>20</sup>.

In particular, OP 4.01 requested the environmental

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<sup>18</sup>World Bank, OP 4.01-Environmental Assessment, op. cit. World Bank, OP 4.12-Involuntary Resettlement, December 2001.

<sup>19</sup>World Bank, OP 4.12-Involuntary Resettlement, December 2001.

<sup>20</sup>World Bank, OP 4.11-Physical Cultural Resources, op. cit.

assessment of projects which are carried out through the preliminary investigation phase of the borrower with the related assistance and supervision of the lending organisation. The policy under consideration recognizes a certain flexibility in the identification of assessment tools that depended on the impact and design of natural ecosystems such as forests, wetlands, etc. and the related content of domestic legislation that was applicable. Thus category A projects were likely to produce a greater impact on the social environment and outside the areas that were directed and interested in the projects where the content of the evaluation was identified in detail<sup>21</sup>. Thus, consultation is requested from interested groups and local and non-governmental organizations by providing information in an understandable language and manner.

OP 4.12 is part of the forced evictions that involve strong risks for the affected populations and terms of economic loss as well as the weakening of the social fabric and the erosion of cultural identity. The general objective avoids transfers of the social fabric and erosion of cultural

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<sup>21</sup>World Bank, OP 4.01. Environmental Assessment, op. cit., Annex B. Content of an Environmental Assessment Report for a Category A Project.

identity. The main objective was to avoid population transfers and minimize negative consequences for the communities involved. Under the supervision of the World Bank, the borrowers informed and consulted the relevant persons who prepared the transfer plan as well as the identification of the right regarding the forms of compensation and the necessary provision of documentation of a form, language and modifications that are accessible<sup>22</sup>.

The policy followed regarding necessary relocations required states to provide protection to vulnerable individuals where indigenous peoples and communities support land-related activities<sup>23</sup>. In this way the income and social identity of these communities are not compromised where the attribution of plots of land have an equivalent and preferable value to monetary compensation<sup>24</sup>. The provision of paragraphs 15 and 16 of OP 4.12 had the right to redress the owners of land and those who claimed rights of owners and customary use while also recognizing

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<sup>22</sup>World Bank, OP 4.12. Involuntary Resettlement, op. cit., par. 13, lett. a).

<sup>23</sup>World Bank, OP 4.12., parr. 8, 9, 11.

<sup>24</sup>World Bank, OP 4.12. Involuntary Resettlement, op. cit., par. 11.

national legislation. The ongoing and controlled policy included assistance for relocation purposes in the immediate, subsequent phase thus providing subsidies and organizing training courses and those who lost their jobs after eviction. This context also includes people who do not claim title to the lands that in the past were occupied and provided in the form of aid.

According to OP 4.11 which concerned the environmental assessment, the effects that were adverse in the project relating to sites and assets of archaeological, historical, aesthetic, religious and general cultural value were taken into consideration<sup>25</sup>. The outcome of the consultation of an interested population allows the state to adopt the appropriate measures to mitigate the impact while guaranteeing the conservation of assets of cultural interest.

## **TOWARDS THE NEW DISPUTE RESOLUTION MECHANISM**

The panel established on 4 October 2021 admitted the request that was submitted to the board of directors

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<sup>25</sup>World Bank, OP 4.11. Physical Cultural Resources, op. cit.

regarding the authorization of the inspection<sup>26</sup>. The panel limited itself to evaluating the admissibility requirements without entering into the validity of the allegations. The response of the management and the panel considered that the damage caused and the complaints of the applicants are precisely linked to the implementation of the controversial project and the activity of IDA<sup>27</sup>. From the relevant report, the request asked through the people who made it to remain anonymous and the threats, the intimidation of being addressed to the panel and the World Bank intervened in its defense and the Ugandan central government was contacted as a body project Manager.

After the relevant authorization in December 2021, the board of directors, after the opening of the relevant investigation and the common agreement of the Ugandan government, asked for to activate the new dispute

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<sup>26</sup>Inspection Panel, Report and Recommendation On a Request for Inspection, Uganda, Second Kampala Institutional and Infrastructure Development Project (KIIDP-2). (P133590), report n. 164640-UG, 4 October 2021: <https://www.inspectionpanel.org/panel-cases/second-kampala-institutional-and-infrastructure-development-project-kiidp-2-p133590>

<sup>27</sup>Inspection Panel, report n. 164640-UG, op. cit., parr. 66 and 68.

resolution mechanism<sup>28</sup>. This choice favored the mission of on-site conduct by functions in the dispute resolution service, informing that the parties bring option advantages. The information and the parties have agreed with the purposes, methods and phases of the mediation through the conclusion of a framework agreement, i.e. the Dispute Resolution Framework Agreement<sup>29</sup>. After the choice of two mediators, assistants and consultants who provided translation and technical support, the World Bank staff collaborated constantly with the methods of the mediators chosen by the parties of Uganda and Washington. The agreements foreseen and agreed without being public were concluded through arguments that redemarcated an area

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<sup>28</sup>Inspection Panel, Uganda: Second Kampala Institutional and Infrastructure Development Project (KIIDP-2) (P133590), Request No. 21/01-DRS, Notice of Agreement to Pursue Dispute Resolution, 2 December 2021.

<sup>29</sup>Dispute Resolution Service, Outcome Report: Case No. 21/01-DRS, reproduced in Notice of Dispute Resolution Agreement, Uganda: Second Kampala Institutional and Infrastructure Development Project (KIIDP-2) (P133590), 31 May 2023, par. 3:

<https://www.inspectionpanel.org/sites/default/files/cases/documents/151-Uganda-KIIDP2-Inspection%20Panel%20Report%20and%20Recommendation-4%20October%202021.pdf>

of a drainage canal and the information of the interested public and the resumption of the works. Whenever human safety concerns were in evidence the Dispute Resolution Service and/or the Bank's management obtained a six-month extension to 31 May 2023, for an agreement where the contents remained confidential. An agreement that was signed by representatives of the public body that was responsible for the project and by 15 representatives of the interested community and 100 members of the latter. The solution was satisfactory to a large part of the local community. There is no shortage of critical voices and of the Accountability Counsel of the non-governmental organization itself regarding the transparency of the procedure (Chacha Mosenda, 2023). Nothing was published and the indication of the applicable law as well as the mechanisms envisaged for the resolution of contractual disputes remained secret.

#### **ASSISTIVE NATURE OF THE INSPECTION PANEL**

The case under review was also followed by a second mediated dispute relating to the electricity grid

modernization project in Nepal where the community of residents submitted an inspection request to the panel complaining about the lack of consultation on the negative impact of a project relating to the villages they passed through, i.e. schools, homes, agricultural land and sites of nature and religious and archaeological interest<sup>30</sup>.

Another case has also been submitted for mediation which still remains pending relating to the construction of a hydroelectric plant in the Sanaga river area (Cameroon)<sup>31</sup>.

The mediation of the project in Uganda, Nepal, was successful in reaching an agreement between state authorities and local communities that put an end to the dispute. The agreements that arrived at the relevant

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<sup>30</sup>Inspection Panel, Report and Recommendation On a Request for Inspection - Nepal-India Electricity Transmission and Trade Project (P115767) and its Additional Financing (P132631), 16 February 2022. Dispute Resolution Service Outcome Report, p. 3ss:

<https://www.inspectionpanel.org/panel-cases/nepal-india-electricity-transmission-and-trade-project-p115767-and-its-additional>

<sup>31</sup>World Bank, Accountability Mechanism Will Start New Dispute Resolution Case Involving Cameroon Hydroelectric Project, 5 December 2022:

<https://accountability.worldbank.org/en/news/2022/Cameroon-DR-process-begins>

contracts remained confidential and without knowing the relevant result in this regard and in detail to the public and interested parties.

These experiences have highlighted the effectiveness of the dispute resolution mechanism and the numerous opportunities for a solution that does not offer the panel the opportunity to express itself given the numerous doubts and the opportunity for mediation, conciliation with an additional value that respected the accountability systems and the numerous state regulations that promoted the good functioning of public administrations through the ombudspersons. The question that arises is the proper functioning of the mediation appeal considered as an alternative to the panel inspection procedure.

The ombudsperson model has also spread and understood in African countries and Latin America, with loans from the World Bank being the main beneficiaries (Hertogh, Kirkham, 2018). The independence and impartiality of these bodies in the executive power as well as the ability to influence public administration varies from state to state. It is added that national realities act as a brake on the mechanisms that constitute the reprisals of government

apparatus and the companies that award contracts and benefits from the implementation of the projects<sup>32</sup>. Involving the World Bank also as an observer offers guarantees for the correctness of the procedure and for the level of the people who presented the relevant complaint. The case for the international community and the borrowing state tends to refrain from skimping conduct and strives to exercise with diligence and protection obligations where the World Bank suspends the disbursement of tranches in the loan and the negative evaluation of financing requests (Ta, 2018).

The dispute mechanism does not fulfill the function that was performed by the inspection panel. A body that carries out the activity of control, assessment and impartial evaluation of the facts and with the task of identifying violations of internal regulations in the bank, thus recommending the adoption of necessary corrective measures. The panel and the final report is published and is

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<sup>32</sup>Global Witness, Decade of Defiance. Ten Years of Reporting Land and Environmental Activism Worldwide, September 2022, p. 16:

<https://www.globalwitness.org/en/press-releases/deadly-decade-land-and-environmental-activists-killing-every-two-days/>

disseminated worldwide to strong social pressure on the bank's management and state authorities as well as to highlight the related violations (Clark, Fox, Treakle, 2003). As a body composed of technical and independent experts, the panel helps to clarify the interpretation of the World Bank's internal policies and the international standards referred to. Their relationships contribute to the definition of the bank's practice as a subject of international law and which contribute to the development of customary international law and in terms of environmental protection and human rights (Naudè Fourie, 2012).

Compliance with the applicable legal rules ensures the use of a mediation and conciliation procedure. If the parties find a contractual solution of a mutual and advantageous nature, it cannot be excluded that this solution goes against the general interests of the international community and the sustainable use of biodiversity and the protection of assets of cultural interest. It is feasible to think that the end of a project, as well as the authorities meeting the requests of the local communities. The disbursement of sums by way of compensation emerges from the fact that the realization of the project gives rise to obligations of internal law and

from rules of conventional international law. Involving the World Bank does not exclude the power of disputing parties and contracts to end disputes and the interests of affected populations. The contracts are confidential and the protection from control is exercised by non-governmental organizations and public opinion.

### **CONCLUDING REMARKS**

As we have noted from the previous paragraphs, the 2020 reform of the World Bank allows us to talk about forward and positive points regarding the deadlines for submitting requests to the panel and the related control of the measures of its investigation. We can speak for a mechanism that has discouraged those who wanted a capable mechanism to assure the international community by the World Bank of damages produced by its own lending activities.

Conciliation and mediation at the local level and the territorial state presents a certain usefulness for the implementation of small projects involving a large number of people as we have noticed in the case of the Lubigi canal,

reducing the number of people as well as the impact on the environment of limited areas. The violations complained of were serious and the destruction and pollution of ecosystems at an environmental level seems inappropriate for the autonomy of the parties to resolve disputes.

The reform is a testament to the work of the BRICS<sup>33</sup> as well as the Asian Infrastructure Investment Bank and the New Development Bank. Similar World Bank loan disbursement activities are perceived by recipient and less demanding countries to enforce human rights standards in sovereignty of the borrowing states (Almeida, 2018). The purposes of the BRICS include the global governance structure that passes from a reform of the Bretton Woods organizations and to other multilateral banks of a development nature taking into consideration that the weight of emerging countries in the world economy results from the manual operations of 2016 influencing the project financing of the

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<sup>33</sup>XV BRICS Summit, Johannesburg II Declaration, BRICS and Africa: Partnership for Mutually Accelerated Growth, Sustainable Development and Inclusive Multilateralism, 23 August 2023, par. 91:

<https://brics2023.gov.za/wp-content/uploads/2023/08/Jhb-II-Declaration-24-August-2023-1.pdf>

countries of the BRICS group and the group of 77 where the framework allows flexibility in the application of the bank's internal rules and the legal structure of the states in the territory where the projects are implemented. Downsizing the inspection panel and the reform of the accountability mechanism of 2020 responds to concerns and claims where countries benefiting from interventions have greater control (ownership) for evolving projects and of their own implementation.

The facts accomplished by the panel highlights the environmental disasters and violations of human rights as a consequence of conduct of a commission or omission nature by the borrowing states. As regards fact-finding, the success of actions of a compensatory nature by IBRD and IDA are favored by affirming from a jurisprudential point of view restrictive interpretations relating to the immunities enjoyed by the agreements establishing internal regulations of immunities from international organisations. In case of replacement of the panel with a confidential procedure where local communities are the main interlocutors of the respective governments, it favors accountability and reduces the transparency that is allowed

to the states, easily removing the control of the international community. International financial organizations are keen to respect the obligations of general international law regarding the protection of the environment and human rights (Ragazzi, 2013). A project is carried out with the consent of the territorial state and local communities in a direct manner and as a result of a mediation procedure which operates within the spirit of international responsibility and international obligations and which have an *erga omnes* nature. The secretary of the WBAM carries out a role of control, evaluation and screening of compliance with international law and inspection of the panel during the subsequent phases of the project emerging thus doubts that are possible for violations of internal law in the bank and giving rise to an international responsibility that provides assistance and help borrowing states to avoid committing illicit acts at a global level (Liakopoulos, 2020)<sup>34</sup>.

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<sup>34</sup>Art. 14 of the International Law Commission, Draft Articles on the Responsibility of International Organizations, with Commentaries, in Yearbook of the International Law Commission, 2011, vol. II, Part Two.

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